Arcata Graphics/Fairfield, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Industrial and Allied Workers, Local 32, AFL–CIO. Case 5–CA–21407

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

Upon a charge filed by the Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Industrial and Allied Workers, Local 32, AFL–CIO, August 14, 1990, the General Counsel of the National Labor Relations Board issued a complaint October 16, 1990, against Arcata Graphics/Fairfield, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. On January 15, 1991, the Respondent filed an amended answer[1] to the complaint, admitting all the factual allegations therein and denying the conclusionary allegations that the Respondent's conduct restrained and coerced employees, violating Section 8(a)(1) of the Act.

On May 3, 1991, the General Counsel filed a Motion for Summary Judgment. On May 9, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 23, 1991, the Respondent filed a statement in opposition to the General Counsel's Motion for Summary Judgment and a Cross-Motion for Summary Judgment. On May 24, 1991, the Board issued a Notice to Show Cause why the Respondent's Cross-Motion for Summary Judgment should not be granted. On June 5, 1991, the General Counsel filed a response to the Board's Notice to Show Cause. On June 7, 1991, the Charging Party filed a statement in support of the General Counsel's Motion for Summary Judgment and in opposition to the Respondent's Cross-Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motions for Summary Judgment

The undisputed facts establish that about March 12, 1990, the Respondent distributed a letter to its employees at its Fairfield, Pennsylvania facility, which stated in pertinent part:

> The second point I would like to address directly concerns the reports I have been receiving about the manner in which employees are being approached to sign a union card. If you are threatened or subjected to abusive treatment to sign a union authorization card by anyone, please notify your Supervisor or the Personnel Department. Steps will be taken to see that such actions are immediately stopped.

The General Counsel alleges that the above-quoted language violates Section 8(a)(1) of the Act, as it constitutes ''a not too subtle attempt by Respondent to have its employees inform management of the identity of Union proponents'' and tends to coerce and restrain employees in the exercise of protected union activity. The General Counsel argues that the term ''abusive treatment'' is as subject to subjective interpretation as the term ''constant badgering'' found to be violative of the Act in *Bank of St. Louis*.[2] The General Counsel contends that its Motion for Summary Judgment should be granted, as there are no material facts at issue that require a hearing before an administrative law judge.

The Respondent opposes the General Counsel's Motion for Summary Judgment. The Respondent admits each of the material factual allegations of the complaint, but denies that the above-quoted language was intended to, or would have the effect of, interfering with, restraining, or coercing employees in the exercise of their Section 7 rights. The Respondent contends that this case is distinguishable from those cases in which the Board has found unlawful broadly worded instructions to employees to report certain union card solicitors.[3] The Respondent argues that the definition of the word ''abusive,'' and its every day usage, is analogous to the word ''threatened,'' which has been found to be sufficiently specific to require the potential infringement of the employees' Section 7 rights to yield to the Respondent's right to assure that its work force is free from coercion at the hands of employee organizers.[4] Thus, the Respondent concludes that union card solicitors who are subjecting fellow employees to abusive treatment are not engaging in protected activities and the Respondent's request for employees to report such conduct does not violate the Act.

We agree with the General Counsel that the Respondent's distribution of the letter violated Section 8(a)(1) of the Act. In this letter, the Respondent has essentially told its employees that if they felt ''subjected to abusive treatment'' by supporters of the

[1] On November 14, 1990, the complaint was reserved on the Respondent with an attachment which had been inadvertently omitted during the initial service.

[2] 191 NLRB 669, 673 (1971), enfd. 456 F.2d 1234 (8th Cir. 1972).

[3] *Bil-Mar Foods of Ohio*, 255 NLRB 1254 (1981) (''harassed, coerced, pressured or threatened''); *Colony Printing & Labeling*, 249 NLRB 223, 225 (1980), enfd. 651 F.2d 502 (7th Cir. 1981) (cause ''trouble'' or ''pressure to join'').

[4] *Liberty House Nursing Homes*, 245 NLRB 1194, 1197 (1979) (while requesting employees to report ''harassment'' violated Sec. 8(a)(1), asking them to report if ''threatened'' is sufficiently specific as to constitute a lawful exercise of management's right to enforce plant discipline).

Union they should inform management who would then ''see that such actions are immediately stopped.'' The Board has found similar statements unlawful because they have the ''potential dual effect of encouraging employees to report to Respondent the identity of union card solicitors who in any way approach employees in a manner subjectively offensive to the solicited employees, and of correspondingly discouraging card solicitors in their protected organizational activities.''[5] Contrary to the Respondent's contention, the request was not limited to reports on matters that could properly be within the Respondent's legitimate concerns, such as ''threats.'' Our dissenting colleague concedes that reasonable minds may differ over the exact definition of ''abusive treatment.'' For this reason, we believe that the Respondent's request to report ''abusive treatment'' could be interpreted by some employees to be broad enough to cover lawful attempts by union supporters to persuade employees to sign union cards during their nonworking time and off the Respondent's premises.[6] Therefore, we find that such a statement is ''tantamount to a request that the employees report persistent attempts to persuade and would therefore tend to restrain the union proponent from attempting to persuade any employee through fear that his conduct would be reported to management.'' *Sunbeam Corp*., 287 NLRB 996, 997 (1988).

Accordingly, we conclude that the Respondent has violated Section 8(a)(1) of the Act, grant the General Counsel's Motion for Summary Judgment, and deny the Respondent's Cross-Motion for Summary Judgment.[7]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation with an office and place of business in Fairfield, Pennsylvania, has been engaged in the business of printing and binding books and other literature. During the preceding 12 months, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its Fairfield, Pennsylvania facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About March 12, 1990, the Respondent distributed to its employees a letter requesting them to report to management any employees who subject them to ''abusive treatment'' while soliciting them to sign union authorization cards. We find, as discussed above, that the Respondent by such conduct has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Respondent has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

CONCLUSION OF LAW

By requesting its employees to inform management about their fellow employees who subjected them to ''abusive treatment'' while soliciting them to sign union authorization cards, the Respondent has interfered with, restrained, and coerced its employees, and has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Arcata Graphics/Fairfield, Inc., Fairfield, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Requesting its employees to inform management if they have been ''subjected to abusive treatment'' by their fellow employees who solicited them to sign union authorization cards, or otherwise inviting and encouraging employees to identify union supporters or discouraging employee involvement in protected activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Fairfield, Pennsylvania, the attached notice marked ''Appendix.''[8] Copies of the

[5] *W. F. Hall Printing Co*., 250 NLRB 803, 804 (1980). See also *Hawkins-Hawkins Co*., 289 NLRB 1423 (1988).

[6] Contrary to our dissenting colleague, we find that the seriousness of the conduct which the Respondent requests the employees to report is not determinative; rather, we view the issue as whether or not the statement is ''so vague as to invite employees generally to inform on fellow workers who were engaged in union activity.'' *Liberty House Nursing Homes*, supra at 1197.

[7] Inasmuch as the Respondent's letter was apparently distributed to all employees, there is no merit in the Respondent's contention that its conduct was de minimis. We find that it will effectuate the policies of the Act to issue our usual remedial order for the violation committed.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Rela-

notice, onforms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I would find that the Respondent did not violate Section 8(a)(1) of the Act when it distributed a letter to its employees advising them to report to management if they were ''threatened or subjected to abusive treatment to sign a union authorization card.'' The majority, in finding the violation, relies, inter alia, on *Bank of St. Louis*.[1] In *Bank of St. Louis*, the bank president issued a letter to all the bank's employees advising them to report to management if they were ''threatened in any way or subjected to constant badgering'' to sign an authorization card. In finding a violation, the judge there reasoned that requesting employees to report ''constant badgering was tantamount to a request that they report ''persistent attempts to persuade,'' in other words, to report on the protected activities of coworkers. (191 NLRB at 673.)

I agree that employees should not be requested to report on the protected activities of coworkers. In the present case, however, employees who subject other employees to ''abusive treatment'' are not engaging in protected activities. The Respondent's letter was not unprovoked. On its face it was a response to employee complaints. And, on this Motion for Summary Judgment, we must take that at face value. While it is true reasonable minds may differ over the exact definition of ''abusive treatment,'' I would find that it is a term that ''does approach a level of specificity which, though not without pitfall, must be assess with a view to the pragmatics of maintaining order and plant discipline in the course of a union campaign.'' *Liberty House Nursing Homes*, 245 NLRB 1194, 1197 (1979). I would find any potential infringement of Section 7 of the Act should yield to the Respondent's right in the face of provocation to assure its employees that they are free in their workplace from abusive treatment from employee organizers. As a result, I would find that the Respondent's letter did not violate Section 8(a)(1).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT request our employees to inform us if they have been subjected to abusive treatment by their fellow employees who are soliciting them to sign union authorization cards or otherwise invite or encourage employees to identify union supporters or discourage employee involvement in protected activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ARCATA GRAPHICS/FAIRFIELD, INC.

tions Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] 191 NLRB 669 (1971), enfd. 456 F.2d 1234 (8th Cir. 1972). I find it clear that subjecting employees to ''abusive treatment'' is far more serious than subjecting employees to ''constant badgering'' as in *Bank of St. Louis*. It is also much more serious than causing employees ''trouble,'' ''putting them under pressure to join a union'' (*Colony Printing & Labeling*, 249 NLRB 223 (1980), enfd. 651 F.2d 502 (7th Cir. 1981), or ''harrassing'' or ''pressuring'' them (*Bil-Mar Foods of Ohio*, 255 NLRB 1254 (1981).